IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

WP(C).No. 21123 of 2007(M)

PETITIONERS:
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1. M.A. SASIKUMAR,
MUKULATH HOUSE, KOTHAMANGALAM P.O.,
VENDUVAZHI, ERNAKULAM DISTRICT.

2. M.A. NARAYANAN,
MUKULATH HOUSE, KARUKADAM P.O.,
VENDUVAZHI, ERNAKULAM DISTRICT.

BY ADV. SRI.ELVIN PETER P.J.

RESPONDENTS:
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1. THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY, LOCAL SELF GOVT.
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE KOTHAMANGALAM MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, KOTHAMANGALAM.

3. THE SECRETARY,
KOTHAMANGALAM MUNICIPALITY, KOTHAMANGALAM.

BY GOVERNMENT PLEADER SRI.T.K.RAVIKUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.K.BASHEER, J.

W.P.(C)No.21123 OF 2007

Dated this the 10th day of July, 2007

JUDGMENT

Petitioners in this writ petition impugn the respective orders issued to them by Kothamangalam Municipality directing them to demolish certain alleged unauthorised structures in their building within seven days.

2. In the nature of the order that I propose to pass I do not deem it necessary to deal with the contentions raised by them, at length. The short question that has cropped up is whether the Municipality was justified in issuing the impugned orders without any prior notice or affording any opportunity to them to show cause.

3. Petitioners have raised a further contention that Section 383-A of the Kerala Municipality Act will not be applicable as far as the building in question is concerned. They contend that Section 383-A was incorporated in the Act with effect from March 24, 1999. Obviously, the building being very old, the above amended provision cannot have any

application. Learned counsel invites my attention to Rule 18 of the Kerala Municipality Building Rules, 1999 also in this connection. In my view, petitioners have to raise all these contentions before the authority which has issued the notice. If there is credence in the above contention, I do not find any reason why the authority shall not drop the proceedings.

4. Learned Standing Counsel, who appears for the Municipality, fairly submits that the impugned orders may be treated as provisional order/notice as contemplated under Rule 18(1) of the Kerala Municipality Building Rules, 1999 to which the petitioners can raise objection.

5. It is submitted on behalf of the petitioners that they are prepared to file their objections in response to the impugned orders treating them as show cause notices. Petitioners shall do so within seven days from today. The Municipality shall pass appropriate orders in the matter strictly on its merit and in accordance with law, as expeditiously as possible, at any rate, within one month from the date of receipt of the objection statements. Needless to

mention, the Municipality shall ensure that petitioners are afforded sufficient opportunity to be heard before any decision is taken in the matter. Undoubtedly, if the Municipality passes orders against the petitioners, it will be open to them to take recourse to the remedy available to them under the Act and the Rules but, the said order shall be kept in abeyance for a period of 10 days from the date of serving a copy of the order on the respective petitioners.

The writ petition is disposed of as above.

A.K.BASHEER, JUDGE

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